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T10918
☐ GAO

Submission of Federal Rules Under the Congressional Review Act

☐ President of the Senate

☒ Speaker of the House of Representatives

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency

Department of Defense

2. Subdivision or Office

OUSD(AT&L)DPAP(DAR)

3. Rule Title

Berry Amendment Changes

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable)
DFARS Case 2003-D099

5. Major Rule ☐ Non-major Rule ☒

6. Final Rule ☒ Other ☐

7. With respect to this rule, did your agency solicit public comments? Yes ☒ No ☐ N/A ☐

8. Priority of Regulation (fill in one)

☒ Economically Significant; or
Significant; or
Substantive, Nonsignificant

☐ Routine and Frequent or
Informational/Administrative/Other
(Do not complete the other side of this form
if filled in above.)

9. Effective Date (if applicable) September 16, 2004 (estimated)

10. Concise Summary of Rule (fill in one or both) attached ☒ stated in rule ☐

Submitted by: Deidre A. Lee (signature)

SEP 13 2004

Name: Deidre A. Lee

Title: Director, Defense Procurement and Acquisition Policy

For Congressional Use Only:

Date Received: _____

Committee of Jurisdiction: _____

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14 SEP 28 PM 5:40
SPEAKER'S ROOMS
U.S. HOUSE OF REPS.

	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F. Did you discuss any of the following in the preamble to this rule?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12612, Federalism	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12875, Enhancing the Intergovernmental Partnership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			

(Billing Code 5001-08-P)

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2003-D099]

Defense Federal Acquisition Regulation Supplement;

Berry Amendment Changes

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004.

Sections 826 and 827 provide exceptions to the domestic source requirements of the Berry Amendment. Section 826 applies to the acquisition of food, specialty metals, and hand or measuring tools needed to support contingency operations or to fulfill other urgent requirements. Section 827 applies to the acquisition of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

EFFECTIVE DATE: *[Date of publication in Federal Register].*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2003-D099.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 69 FR 26508 on May 13, 2004, to implement Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). The rule amended DFARS 225.7002-2 and 252.225-7012 to provide new exceptions to the domestic source requirements of the Berry Amendment (10 U.S.C. 2533a), as authorized by Sections 826 and 827 of Public Law 108-136. DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the exceptions to domestic source requirements authorized by the rule are limited to acquisitions of (1) food, specialty metals, and hand or measuring tools needed to support contingency operations or to fulfill other urgent requirements; and (2) waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule

does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 225 and 252, which was published at 69 FR 26508 on May 13, 2004, is adopted as a final rule without change.